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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

RAKESH DHINGRA, Plaintiff and Appellant, v. GURDEV S. MAND, Defendant and Respondent.	A150503 (Contra Costa County Super. Ct. No. MSN162005)

Appellant Rakesh Dhingra appeals an order denying his request for a civil restraining order against respondent Gurdev S. Mand. We affirm.

BACKGROUND

Dhingra filed his request on October 13, 2016, alleging Mand had tried to run him over in a van and, on two other occasions, had intimidated and harassed him in a parking lot. Dhingra supported his request with three pages of allegations accusing Mand of having procured "sex workers" for Dhingra's former wife over a period of several years while Dhingra was attending medical school in the Philippines, and alleging that his wife in turn had contracted a sexually transmitted disease that she passed on to Dhingra. Dhingra alleged that his growing suspicions about his wife's conduct led to Mand threatening, intimidating and stalking him as he began to publicly expose Mand's "nefarious" activities.

The court granted Dhingra a temporary restraining order based on these allegations, Mand thereafter filed a written opposition disputing Dhingra's version of events and accusing Dhingra of "lashing out" for various motives, and the matter then

proceeded to an unreported hearing on December 6, 2016. According to the court's minute order from the hearing, both parties were "sworn and examined." The court then denied Dhingra's request for a restraining order and ordered him to pay attorney fees in the amount of $1,500. Dhingra then initiated this appeal.

On appeal, his narrative of events has expanded far beyond what we can glean from the limited appellate record he has supplied, principally based upon a motion asking this court to take new evidence on appeal or, alternatively, for a writ of error *coram vobis*. He now asserts, in some detail, that his ex-wife was actually an "intersex" (or, transgender) sex-worker herself, engaged in a secretive sex-trafficking trade with Mand who was her "pimp."[1]

DISCUSSION

Dhingra raises two issues on appeal.

First, he attacks the trial court's "findings that [he] had blocked Mr. Mand's vehicle" in the parking lot, which he says was the basis for the court's erroneous ruling that Mand didn't constitute a credible threat of violence against him. This argument advances two points: he accuses Mand of "blatantly . . . manag[ing] to lie without raising any doubt from the Court"; and he contends, without citations to the record, there were previous incidents of harassment and stalking which constituted a course of harassing conduct that began in October 2013 and continued intermittently until October 19, 2016.

Dhingra has failed to demonstrate any error with regard to this first issue, for several reasons. The principal one is that the appellate record is inadequate for us to review this argument in at least two ways. One, there are no findings by the trial court in this record: the clerk's transcript contains no written findings, and there are no oral findings because there is no transcript of the unreported December 6, 2016 hearing. Second, even if we had written findings to review, the absence of an official record of the contested hearing (i.e., a reporter's transcript, or an agreed or settled statement) precludes

[1] We cannot tell to what degree these new facts are supported by the voluminous exhibits he has lodged in support of his motion. Although his brief contains record citations for these new factual assertions, the citations are somewhat impenetrable.

us from considering the sufficiency of the evidence or other claims of error, because we have no record of what the evidence was or what took place at the hearing.[2] (See *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574 [failure to provide transcript or settled statement of trial precludes review of two claims of trial error, because "a party challenging a judgment has the burden of showing reversible error by an adequate record"]; *Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1201 [where appellant failed to furnish a reporter's transcript of the relevant hearing, "[w]e must . . . presume that what occurred at that hearing supports the judgment"]; *Foust v. San Jose Construction Co., Inc*. (2011) 198 Cal.App.4th 181, 186–187.) *Chodos v. Cole* (2012) 210 Cal.App.4th 692, which Dhingra cites in his reply brief, is not on point; the absence of a hearing transcript there was not fatal because no witnesses testified at the hearing and the appellant was not challenging anything that took place at the hearing; *Chodos* merely held a transcript was not necessary to determine the legal question whether, based on the parties' written submissions, the anti-SLAPP statute applied to the pleading in question. (See *id*. at pp. 699–700.)

Dhingra's argument also fails because, in essence, he is asking this court to reweigh the evidence and make credibility determinations, neither of which we are empowered to do. " ' " 'Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.' " ' " (*Bloxham v. Saldinger* (2014) 228 Cal.App.4th 729, 750.)

The second point Dhingra raises on appeal is a one-paragraph argument containing no legal authority, asserting that the court acted "unconscionably" by asking him whether

[2] His brief cites to a document in the clerk's transcript as a record of what took place at the hearing, which is not sufficient. Attached to a one-page request for a statement of decision, it is merely a 13-page document he prepared, captioned "Proposed Statement on Appeal," that lists a series of purported errors by the court supported by a narrative of what supposedly took place at trial. It is unsworn, and respondent tells us "it is not the actual questions and answers that occurred at the hearing."

he believed Mand was having an affair with his ex-wife, a question he maintains prejudicially "presumed" that this was true. For the reasons just discussed, the record is not adequate for us to consider this argument either. In addition, it is not supported by meaningful analysis or citation to authority and so we treat it as forfeited. (See *In re A.C.* (2017) 13 Cal.App.5th 661, 672.)

Dhingra also asserts several new points in his reply brief, including assertions of structural error based on judicial bias. We disregard all of these new points, however, because they were not raised in the opening brief which "deprives the opposing party of an opportunity to respond." (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 656; see also *Mt. Hawley Ins. Co. v. Lopez* (2013) 215 Cal.App.4th 1385, 1426.)

Finally, we deny Dhingra's motion asking us to take judicial notice and/or take new evidence on appeal or, alternatively, for a writ of error *coram vobis*. The new evidence bears principally on his theory that his former wife was engaged in sex-trafficking with Mand, and also engaged in "extrinsic fraud" because, as Dhingra says he has come to discover, she is an intersex person (or *Hijras*, as referred to in Indian culture), and as such is genetically predisposed to engage in prostitution. Without elaborating the many reasons for denying his motion, we note that making new findings on appeal, or issuing a writ of *coram vobis* commanding the trial court to reconsider its decision in light of the new evidence, are both extraordinary remedies that are rarely exercised, and the motion presents no basis for this court to take either step. (See generally Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2018) (Eisenberg) ¶ 5:191 et seq. [writ of *coram vobis*].) Among other reasons, Dhingra fails to demonstrate persuasively either the relevance of the new evidence in question to his entitlement to a restraining order, or that this is an exceptional case warranting either type of extraordinary judicial intervention. In particular, with regard to his writ request, he has not shown that the proffered new evidence "will either compel or make probable a different result." (Eisenberg, ¶5:191a, italics omitted.) He also concedes that the materials he asks the court to judicially notice were not presented to the trial court, and ordinarily appellate courts will look only to the record made in the trial

court. (See, e.g., *Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 325–326 [declining to take judicial notice of records not presented to the trial court].)

In short, Dhingra has not demonstrated any basis for reversing the trial court's order or remanding this case to the trial court to take new evidence.

DISPOSITION

The order is affirmed. Respondent shall recover his appellate costs.

STEWART, J.

We concur.

RICHMAN, Acting P.J.

MILLER, J.